

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ORCHARD ENTERPRISES NY, INC.,

Plaintiff,

– against –

MEGABOP RECORDS LTD. t/a MBOP DIGITAL,

Defendant.
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Case No. 09-civ-9607 (GBD)

Hon. George B. Daniels

**DECLARATION OF
JUDD BURSTEIN, ESQ.**

I, Judd Burstein, declare as follows:

1. I am an attorney and a principal in the law firm of Judd Burstein, P.C. (“JBPC” or the “Law Firm”), attorneys for the Defendant Megabop Records Ltd. t/a MBOP Digital (“Defendant” or “Megabop”).

2. I submit this declaration in support of JBPC’s motion for an Order (a) pursuant to Rule 1.4 of the Local Civil Rules of the United States District Court for the Southern District of New York, granting the Law Firm leave to withdraw as counsel for Defendant in the above-captioned matter; with (b) such other and further relief as this Court deems just and proper.

3. Pursuant to JBPC’s agreement with Defendant, JBPC would represent Defendant in the above-captioned matter in exchange for, *inter alia*, the payment of a mutually agreed upon retainer fee, and Defendant’s promise to refill that retainer when necessary.¹

¹ To avoid any privilege concerns, we have not included with this application documents detailing our retainer arrangement with Defendant, or the bills that have been sent to it. We rather respectfully propose that we provide those documents to the Court *in camera* if and when the Court desires copies of same.

4. As a courtesy to Defendant, JBPC agreed to accept half of the agreed upon retainer fee at the outset of JBPC's representation of Defendant in November 2009, with the caveat that Defendant would pay the remaining half of the retainer payment by on or before December 1, 2009.

5. While Defendant paid the first half of the agreed upon retainer fee, over six months has passed since the second half of the retainer fee became due and Defendants have yet to remit payment.

6. At present, JBPC's time charges and expenses exceed the amount that it has been paid to date (*i.e.* the first half of the retainer payment that Defendant made at the beginning of JBPC's representation). However, should this Court grant JBPC's leave to withdraw as counsel, JBPC will waive all fees and expenses which remain due and owing.

7. After many failed attempts to collect the second half of the retainer fee which remains due and owing, JBPC informed Defendant in April 2010 that Defendant was in breach of the retainer agreement and that if Defendant did not retain new counsel, JBPC would make a motion to this Court to withdraw.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 8th day of June, 2010, in New York, New York.



JUDD BURSTEIN (JB-9585)